



IN THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY, WEST VIRGINIA

Andrew Miller,  
Petitioner,

VS

Civil Action No. 2:17-4398  
42 U.S.C. § 1983

James Stucky,  
Respondent.

### COMPLAINT

#### JURISDICTION:

State courts have jurisdiction to hear claims based on Federal Civil rights statutes and must apply federal law in doing so. Every state has expressly or by implication opened its court to § 1983 actions. Howlett v. Rose, 496 U.S.356, 110 L. Ed 2d 332, 1105 S. Ct. 2430 (1990) State immunity rules and notice requirements do not apply in state Court § 1983 action. Felder v. Casey, 487 U.S. 131, 101 L. Ed 2d 123, 108 S.Ct. 2302 (1988) 42 U.S.C. § 1983

#### I. Previous Lawsuits:

- A. Have you began other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise relating to your imprisonment?

Yes \_\_\_\_\_ No \_\_\_\_\_

- B. If your answer to A is yes, describe each lawsuit in the space provided. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline).

1. Parties to this previous lawsuit:

Plaintiffs:

Andrew Miller

Defendants:

David Ballard

2. Court (if federal court, name the district; if state court, name the county):

Southern District West Virginia  
Charleston Division

3. Docket Number: 2:14-CV-16868

4. Name of the judge to whom case was assigned:

Wayne L. Tinsley

5. Disposition (for example: Was the case dismissed? Was it appealed?

Is it still pending?)

Pending!

6. Approximate date of filing lawsuit: 10/1/14

7. Approximate date of disposition: \_\_\_\_\_

II. Place of present confinement: St. Olive Correctional

Complex

(In item C below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use item D for the names, positions, and places of employment of any additional defendants.)

C. Defendant JAMES C. STUCKY  
is employed as JUDGE IN KANAWHA COUNTY  
at THE CIRCUIT COURT!

D. Defendant DONALD MORRIS  
is employed as PROSECUTOR  
at 301 VIRGINIA ST EAST  
CHARLESTON, WV 25301

E. Defendant MARK PLANTS  
is employed as PROSECUTOR  
at 301 VIRGINIA ST EAST  
CHARLESTON, WV 25301

F. Defendant TROY N. GIOTRAS  
is employed as LAWYER  
at GIOTRAS LAW FIRM

G. Defendant \_\_\_\_\_  
is employed as \_\_\_\_\_  
at \_\_\_\_\_

H. Defendant \_\_\_\_\_  
is employed as \_\_\_\_\_  
at \_\_\_\_\_

I. Any additional defendants \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IV. Statement of Claim

State here as briefly as possible the facts of your case. Describe how each defendant is involved. Include also the name of other persons involved, dates, and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, set forth each claim in a separate paragraph. (Use as much space as you need. Attach extra sheet if necessary).

(In item C below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use item D for the names, positions, and places of employment of any additional defendants.)

C. Defendant: JAMES C. STUCKY  
is employed as: (Judge) Kanawha County  
at Circuit Court

D. Additional defendants: TROY GIBTRAS (Attorney) of  
Gibtras Law Firm, MARK PLANTS & DONALD  
MORRIS Prosecuting Attorney, &

#### IV. Statement of Claim

State here as briefly as possible the facts of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates, and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, set forth each claim in a separate paragraph. (Use as much space as you need. Attach extra sheets if necessary.)

On April 13<sup>th</sup> 2010 the Petitioner Pleaded guilty to Attempt  
murder - 3<sup>rd</sup> to 15<sup>th</sup> yrs - to run concurrent with the  
Raleigh County Case no. 09-f-233-H Counts 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup>  
(Ex. 1) This is Contract law! Plants, Morris, & Gibtras Agreed  
to full fill the terms of this plea agreement. (Ex. 2) ON the  
April 13, 2010 plea agreement #4 it states "it is further  
understood that should any party to this agreement fail to meet  
the terms & conditions of this agreement then this agreement  
should terminate as null & void. (Ex. 2) the Petitioner

## IV. Statement of Claim (continued):

never plead guilty to Count 4<sup>th</sup> in Raleigh County case no 09. F. 233 (Ex. 3) The judge James Stucky is suppose to uphold this Plea Agreement between defendants Morris, Plonks, & Giotras (Ex. 1) this judge is suppose to set aside this conviction upon an offered Partice motion. Plaintiff is OFFENDED for the terms of the Agreement is not fulfilled in full! Defendant Stucky still has not overturned this conviction after plaintiff filed his motion ON or ABOUT Sept. 30<sup>th</sup> 17!

None of the defendants has full filled their part of the plea agreement & sentence petitioner to the penitentiary this violates Plaintiff 14<sup>th</sup> amendment due process.

## V. Relief

State briefly exactly what you want the court to do for you. Make no legal arguments.

Cite no cases or statutes.

Order the defendants to pay 100000<sup>00</sup> in cash jointly & severally. Order the defendant to do their job AS to the Plea Agreement/Contract law & Overturn the conviction, & Cover all expenses in this case & whatever this Court deems proper.

V. Relief

State briefly exactly what you want the court to do for you.  
Make no legal arguments. Cite no cases or statutes.

1,000,000<sup>4</sup> in cash!  
I tell them to  
do the right  
thing.

VI. Counsel

A. If someone other than a lawyer is assisting you in preparing this case, state the person's name: \_\_\_\_\_

B. Have you made any effort to contact a private lawyer to determine if he or she would represent you in this civil action?

Yes \_\_\_\_\_

No   /  

If so, state the name(s) and address of each lawyer contacted.

\_\_\_\_\_  
\_\_\_\_\_

If not, state your reasons: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_



C. Have you previously had a lawyer representing you in a civil action in this court?

Yes \_\_\_\_\_ No \_\_\_\_\_

If so, state the lawyer's name and address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signed this 7 day of NOV, 2017.

[Signature]  
(Signature of Plaintiff)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 7 day of NOVEMBER, 2017.

[Signature]  
(Signature of Plaintiff)

**STATE OF WEST VIRGINIA**  
**COUNTY OF \_\_\_\_\_,**

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
(Notary Public)

STATE OF WEST VIRGINIA

COUNTY OF \_\_\_\_\_, TO-WIT:

**VERIFICATION**

Andrew Miller, the Petitioner in the foregoing 42 U.S.C. § 1983 Complaint, after being duly sworn, says that the facts and allegations contained therein are true, except insofar as they are stated to be upon information and belief, and that insofar as they are therein stated, they are believed to be true.

Andrew Miller  
Petitioner

Subscribed and sworn before me this 30<sup>th</sup> day of October, 2017.  
My commission expires Sept 10, 2020.

Brenda K. Blake  
Notary Public

